hearing of the appeal we allowed the appeal and now give our reasons.

The first letter, dated June 6, 1979 is a letter from the respondents' solicitors to the appellant's solicitors. It reads: —

"Dear Sirs,

Re: *Apt. 3, Fernhill Apartment*

We act for Mdm. Rauni Marjatta Seow, who instructs us that she wishes to purchase the above property, subject to title being in order, at a price of $140,000.

We are informed that you act for Mr. Gary Quek, the owner of the above property.

If you are similarly instructed, please let us have the title deeds and the Agreement for Sale and Purchase for our necessary action.

Yours faithfully,

.....".

It is to be observed that the words are "wishes to purchase the above property, subject to title being in order, at a price of $140,000" and not simply "offers to purchase the above property at a price of $140,000". It is also to be observed that the letter ends with the sentence asking for "the Agreement for Sale and Purchase for our necessary action".

It is said on behalf of the respondents that that letter contains an offer by the respondents to purchase the property referred to on the terms of an open contract and that if that offer was accepted the parties would be immediately bound. We do not agree and construe that letter, in particular the last sentence, as either indicating or could reasonably be construed by the owner as indicating, an intention that the offer to purchase his property was subject to the parties signing an "Agreement for Sale and Purchase", a document which in the ordinary course of transactions relating to the sale of land would be the document which constitutes the contract of sale.

The next letter, dated June 11, 1979 is of no assistance. Then the respondents' solicitors on June 27, 1979 wrote to the appellant's solicitors as follows: —

"Dear Sirs,

Re: *Apt. 3, Fernhill Apartment*

We write to confirm the tele-conversation between yourself and our Miss Alkaff this afternoon, whereby you informed us that you have been instructed to proceed with the sale of the above property to our client.

Pending the signing of the Sale Agreement, we are instructed to forward herewith a cheque for the sum of $14,000 being the 10% deposit, to be held by you as stakeholders.

Kindly acknowledge receipt.

Yours faithfully,

.....".

On behalf of the respondents it is said that this letter is evidence of an oral acceptance by the appellant of the first respondent's offer and that a binding contract on open contract terms came into existence when a member of the firm of solicitors acting for the appellant orally informed Miss Alkaff of the firm of solicitors acting for the respondents that his firm "had been instructed to proceed with the sale of the above property to (the first respondent)". It is to be observed that the words the gentleman is said to have spoken are that his firm "have been instructed to proceed with the sale of the above property" and not that his firm "have been instructed by the appellant to accept the offer to purchase the above property".

Then comes the next letter relied on by the respondents which is the letter dated July 9, 1979 from the appellant's solicitors to the respondents solicitors: —

"Dear Sirs,

Re: *Apt. 3, Fernhill Apartment*

We are in receipt of your letter of the 27th ultimo and the enclosure.

We have written to the existing mortgagees for the title deeds and shall forward you the same upon receipt.

Meanwhile we forward herewith Agreement for Sale in duplicate for your client's signature and return to us.

Kindly confirm your client is a Singapore citizen.

Yours faithfully,

.....".

In our opinion that letter is not, as said on behalf of the respondents, a recognition or affirmation that the parties have earlier come to an agreement on the sale of the property on open contract terms. In our view, the penultimate sentence which referred to the "Agreement for Sale in duplicate" enclosed with that letter is a clear indication that up to that stage the appellant had contemplated and intended that the bargain would be struck in the usual manner by the parties signing and exchanging an agreed Agreement for Sale and Purchase prepared by solicitors.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Battenberg & Talma; Francis T. Seow.*

LOK SHOON SHING v. QUEK SWEE KIT & ORS.

[A.Cr.J. (Wee Chong Jin C.J.) March 25, 1981]

[Singapore — Magistrate's Appeal No. 91 of 1979]

Copyright — Gramophone records — Possession for sale of pirated copies — Copies in cassette tapes — Whether copyright subsists — Whether exact reproduction — Copyright (Gramophone Records & Government Broadcasting) Act (Cap. 188), ss. 2 & 3(1).

The appellant appealed against his conviction on six charges of having in his possession for sale pirated copies of gramophone records contrary to section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act (Cap. 188). The alleged pirated copies were cassette tapes found in the premises of Corina Music Centre of which the appellant was the sole proprietor. The main contention in this appeal was that the prosecution had failed to prove that the cassette tapes in the possession of the appellant were copies of the gramophone records in which copyright subsisted.

Held: in this case there was ample evidence to hold that there was sufficient *prima facie* evidence that the cassettes were copies of the gramophone records within the meaning of the Act.

Case referred to:-

(1) *Kwah Hai Gong* v. *Public Prosecutor* [1979] 1 M.L.J. 16.

MAGISTRATE'S APPEAL.

K.E. Hilborne for the appellant.

E.C. Foenander (Deputy Public Prosecutor) for the respondents.

Chua Keng Loy held a watching brief for the three complainants.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal by Lok Shoon Shing against his conviction on the following six charges: —

"1. That he, on or about the 15th day of December, 1976 at Corina Music Centre of 16-17, Block X, New World Amusement Park, Serangoon Road, Singapore 0821, had in his possession for sale 5 pirated copies of a gramophone record 'Olivia Newton John — Don't Stop Believing' and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act, Chapter 188.

2. That he, on or about the 15th day of December, 1976 at Corina Music Centre of 16-17, Block X, New World Amusement Park, Serangoon Road, Singapore 0821, had in his possession for sale 5 pirated copies of a gramophone record 'Tracy Huang — Feelings' and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act, Chapter 188.

3. That he, on or about the 15th day of December, 1976 at Corina Music Centre of 16-17, Block X, New World Amusement Park, Serangoon Road, Singapore 0821, had in his possession for sale 5 pirated copies of a gramophone record 'Teresa Carpio — Songs For You' and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act, Chapter 188.

4. That he, on or about the 15th day of December, 1976 at Corina Music Centre of 16-17, Block X, New World Amusement Park, Serangoon Road, Singapore 0821, had in his possession for sale 5 pirated copies of a gramophone record 'Francis Yip — Something Old Something New' and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act, Chapter 188.

5. That he, on or about the 15th day of December, 1976 at Corina Music Centre of 16-17, Block X, New World Amusement Park, Serangoon Road, Singapore 0821, had in his possession for sale 5 pirated copies of a gramophone record 'Emillia Contessa — Berjoget Bersama' and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act, Chapter 188.

6. That he, on or about the 15th day of December, 1976 at Corina Music Centre of 16-17, Block X, New World Amusement Park, Serangoon Road, Singapore 0821, had in his possession for sale 5 pirated copies of a gramophone record 'Paul Anka — Feelings' and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act, Chapter 188."

The alleged pirated copies are cassette tapes found in the premises of Corina Music Centre of which the appellant is the sole proprietor. Section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act (hereinafter referred to as "the Act") provides as follows: —

"3.—(1) Every person who makes, reproduces, imports for sale, sells, exposes or offers for sale, or has in his possession for sale, any pirated copies of any gramophone record, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars, and in the case of a second or subsequent conviction to imprisonment for a term not exceeding one year or a fine not exceeding two thousand dollars or to both such imprisonment and fine."

Section 2 of the Act defines "gramophone record" to mean: —

"the material first embodying the recording of a sequence of sounds capable, by the use of that material, of being automatically reproduced aurally. . . ."

and defines "pirated copies, in relation to any gramophone record", to mean: —

"any copies of such record made or reproduced without the consent lawfully given by the owner of the copyright in such record."

When a person is charged under section 3(1) of the Act with having in his possession for sale pirated copies of a gramophone record the prosecution must prove the following four ingredients, namely: —

(1) he had in his possession for sale the alleged pirated copies of such gramophone record;

(2) copyright subsists in such gramophone record;

(3) the alleged pirated copies are copies of such gramophone record; and

(4) the alleged pirated copies were made or reproduced without the consent lawfully given by the owner of the copyright in such gramophone record.

During the trial the appellant did not dispute the evidence adduced by the prosecution to prove ingredient (1). The appellant also did not challenge the evidence contained in two affidavits to prove ingredient (2). The main defence at the trial rested on proof of ingredient (3) as the prosecution evidence to prove ingredient (4) was not seriously challenged and the defence offered no evidence when the appellant was called on to enter upon his defence.

The main contention in this appeal is that the prosecution had failed to prove that the cassette tapes in the possession of the appellant were copies of the gramophone records in which copyright subsisted. It is a question of fact, which is incumbent on the prosecution to prove, whether or not a particular cassette is a copy of a particular gramophone record (see *Kwah Hai Gong* v. *Public Prosecutor*[1]). The first argument advanced on behalf of the appellant is that the prosecution, although it proved that the songs in a particular cassette were the same songs in a particular gramophone record, did not adduce any evidence to prove that the sounds produced when the cassette was played were the same sounds produced when the gramophone record was played. It is argued that without such evidence there was no proof that the cassette was a copy of a particular gramophone record. I reject this argument. There was ample evidence before the Magistrate for him to come to the conclusion that there was sufficient *prima facie* evidence that the cassettes were copies of the gramophone records within the meaning of the Act. The next argument is that on the authority of *Kwah Hai Gong* v. *Public Prosecutor, supra,* the prosecution must prove that the alleged pirated copy must be an exact reproduction of the gramophone record in that not only must all the songs in a gramophone record be reproduced in the cassette for the cassette to be a pirated copy of the record but also the sequence or order of the songs in the cassette must be the same as the sequence or order of the songs in the record and the number of

songs must not exceed the number of songs in the record. I reject this argument also. *Kwah Hai Gong's* case did not establish that proposition.

The other contentions raised during the hearing of the appeal rest on the argument that there was insufficient *prima facie* evidence or that the evidence was unsatisfactory to prove that copyright subsisted in the gramophone records or that the copyright owners had not given their consent to making reproductions of the records.

In my opinion there is no merit in these contentions and I am satisfied that there was sufficient *prima facie* evidence before the Magistrate at the close of the case for the prosecution to justify his calling on the appellant to enter upon his defence on the six charges. Accordingly the appeal is dismissed.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Chua, Hay & Wee.*

MALAYSIAN REPORTS

SOCOOIL CORPORATION BHD. v. NG FOO CHONG & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat & Syed Othman F.JJ.) September 9 & December 5, 1980]

[Kota Kinabalu — Federal Court Civil Appeal No. 59 of 1980]

Trade Marks — "Golden Dragon" trade mark — Registered in Sabah by respondents — Application for order that said trade mark used in relation to goods not manufactured or distributed by respondents be deemed to be false trade description — Order made — Application to discharge order — Sabah Trade Marks Ordinance, ss. 27, 52, 54 & 55 — Trade Descriptions Act, 1972, s. 16.

The respondents in 1976 had registered in Sabah the trade mark of "Golden Dragon" in respect of edible oil under the Sabah Trade Marks Ordinance. In 1978 certain cooking oils not of the respondent's manufacture and bearing the identical trade mark of the "Golden Dragon" was sold in Sabah. The respondents applied *ex parte* for an order pursuant to section 16 of the Trade Descriptions Act, 1972 that the said trade mark of "Golden Dragon" used in relation to edible oils not manufactured by or distributed by the respondents shall be deemed for the purposes of the said Act to be a false trade description. The learned trial judge made the order in terms. Subsequently the appellants who claimed to have a proprietary interest in the trade mark of "Golden Dragon" applied to have the order discharged. They claimed to have started selling cooking oil in Malaysia under the "Golden Dragon" trade mark since 1976. The appellants had applied for registration of the trade mark in West Malaysia but as objection was raised by the respondents the mark had not been registered. The trial judge refused to discharge his previous order and the appellants appealed.

Held: as the respondents were the proprietor of a registered trade mark in Sabah and they have shown that some other person was infringing the registered trade mark in the course of trade, they were entitled to the order declaring that the infringing trade mark was a false trade description.

FEDERAL COURT.

R.R. Sethu (*Low Chee Boon* and *Cecil Ian Robertson* with him) for the appellants.

Porres P. Royan (*Gerard Math Lee Min* with him) for the respondents.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): This appeal is against the refusal of the learned judge to discharge an order made by him earlier in respect of certain trade mark.

On January 22, 1976 respondents registered in Sabah the trade mark of "Golden Dragon" consisting of the device of a golden coloured dragon enclosed in a circle in respect of edible oil under the Sabah Trade Marks Ordinance (Cap. 142). The trade mark number is 19862 in Class 29. A certificate of the said registration was issued by the Registrar of Trade Marks, Sabah. In addition to the above trade mark respondents are also the registered proprietors in Sabah since 1973 of the "Double Dragon" trade mark No. 16293 and the "Double Phoenix" trade mark No. 16493 each of which also consists of the device of a dragon as a distinctive feature. In 1978 certain cooking oils not of respondents' manufacture and bearing identical trade mark of the "Golden Dragon" were sold in Sabah. It should be pointed out that the trade marks were only identical in the sense that the device of a dragon was used in each case but the design was dissimilar. So, by a notice of motion dated June